

V. REMARKS

Claims 1-11 are rejected under 35 U.S.C. 103(a) as unpatentable over Kobayashi et al. (U.S. Patent No. 6,626,365). The rejection is respectfully traversed.

Kobayashi is directed to an expansion valve. The tube member and a flange portion are formed as an integral construction.

It is respectfully submitted that the rejection is improper under substantive grounds.

Under 35 U.S.C. 103 (c), it states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

It is respectfully submitted that Kobayashi must be disqualified as prior art under 35 U.S.C. 102 (e), which states:

A person shall be entitled to a patent unless – (e) the invention was described in ... (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent...

Under MPEP 706.02 (f), it states:

In order to apply a reference under 35 U.S.C. 102 (e), the inventive entity of the application must be different than that of the reference. Note that, where there are joint inventors, only one inventor need be different for the inventive entities to be different and a rejection under 35 U.S.C. 102 (e) is applicable even if there are some inventors in common between the application and the reference.

The cited reference states that the inventors are Kazuto Kobayashi and Masamichi Yano while the inventors of the present invention are Kazuto Kobayashi, Masamichi Yano and Kazuhiko Watanabe. Thus, under MPEP 706.02(f), there are different inventive entities between the cited applied art and the present application.

As provided in MPEP 706.02(k), effective Nov. 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 the 35 U.S.C. 102 (e) is now disqualify as prior art against the claimed invention in that subject matter and claimed invention "work, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." It is respectfully submitted that the

prior art against the claimed invention must be disqualified because the claimed invention was invented by the same person, Fujikoki Corporation, as shown on the cover page of the Kobayashi patent and as reflected on reel 014247, frame 0082, wherein the inventors of the present invention have assigned their patent rights to Fujikoki Corporation.

Based on the above, Kobayashi is not a proper reference because it is disqualified as such under 35 U.S.C. 103 (c).

Withdrawal of the rejection is respectfully requested.

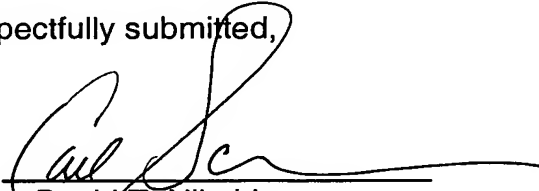
In view of the foregoing, reconsideration of the application and allowance of the pending claims are respectfully requested. Should the Examiner believe anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

Should additional fees be necessary in connection with the filing of this paper or if a Petition for Extension of Time is required for timely acceptance of the same, the Commissioner is hereby authorized to charge Deposit Account No. 18-0013 for any such fees and Applicant(s) hereby petition for such extension of time.

Respectfully submitted,

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